APPENDIX

SAMAN GULAM v. TAN SRI HAJI MOHD. SUNOH MARSO & ORS.

LAU PUI KEONG v. TAN SRI HAJI MOHD. SUNOH MARSO & ORS.

AHMAD BAHROM BIN DATUK HJ. ABU BAKAR TITINGAN v. TAN SRI HAJI MOHD. SUNOH MARSO & ORS.

[S.C. (Abdul Hamid C.J. (Malaya), Seah & Hashim Yeop A. Sani S.C. JJ.), November 5, 1985]

[Kuala Lumpur – Supreme Court Civil Appeal Nos. 358, 359 & 360 of 1985]

Constitutional Law – Vacancy in Legislative Assembly – Decision of Speaker – Constitution of Sabah, arts. 18(2)(b) & 21(5) – Federal Constitution, art. 113.

Elections – Interlocutory injunction against Election Commission – Jurisdiction of court.

SUPREME COURT.

James Puthucheary (*Dominic Puthucheary, Phillip Koh* and *Douglas Primus* with him) for the appellants.

Raja Abdul Aziz Addruse (*Sri Ram* and *Dr. Yaccob Merican* with him) for 1st respondent.

T. Selventhiranathan (Senior Federal Counsel) for 2nd to 7th respondents.

Abdul Hamid C.J. (Malaya) (delivering oral Judgment of the Court): Two vital questions arise in this appeal: (1) the decision of the Speaker of the Legislative Assembly of Sabah on the vacancy of a seat in the Assembly under Article 18(2)(b) and the consequences that follow under Article 21(5) of the Constitution of the State of Sabah; (2) the jurisdiction of the courts to issue an interlocutory injunction against the Election Commission until the determination of the validity of the vacancy of the seat in question by the Court.

The relief sought is discretionary. We agree with Raja Abdul Aziz Addruse that on the facts as disclosed in the affidavit and the reliefs sought the learned Judge was right in refusing to grant the interim injunction. The normal rule is that an ordinary person is bound by his signature. Article 18(2)(b) seems clear enough. The Article reads –

"18.(2) An elected or nominated member shall also vacate his seat in the Assembly if –

(a) ....

(b) he resigns his seat by writing under his hand addressed to the Speaker."

In an appeal of this nature this Court must be satisfied before it interferes that the learned Judge had erred in law in that he exercised his discretion based on wrong principles of law. We are of the view that the learned Judge had not acted erroneously.

With regard to the second question, our view is that the Election Commission performs its functions under the Constitution. Its functions are clearly set out in Article 113 of the Federal Constitution, that is, subject only to the provisions of the Federal law, to conduct elections to the House of Representatives and the Legislative Assemblies of the States. The State Constitution expressly provides under Article 21(5) that

"Whenever the seat of an elected member has become vacant for any reason other than a dissolution, the vacancy shall, within ninety days from the date on which it is established that there is a vacancy, be filled by election in accordance with the provisions of this Constitution:

Provided that if a casual vacancy is established on a date within six months of the date the Legislative Assembly shall, in accordance with clause (3) of this Article, stand dissolved, such casual vacancy shall not be filled."

We are of the view that the Judge was correct in not granting the interlocutory injunction against the Election Commission.

In light of the reasons given above, we dismiss the appeal with costs.

Deposit to respondents to account for taxed costs.

Order accordingly.

Solicitors: *Luping Koding Kurup Golokin Noor & Co.; Sri Ram, Zulkifly & Kumar.*

MBF FINANCE BHD. v. MALAYSIA AIR CHARTER CO. SDN. BHD. & ORS.

[S.C. (Salleh Abas L.P., Seah & Syed Agil Barakbah S.C.JJ.) June 10 & August 1, 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 496 of 1986]

Practice and Procedure – Judgment debt – Interest on – Whether High Court has jurisdiction to award interest in excess of 8% per annum on judgment debt – Distinction between "debt" and "judgment debt" – R.H.C. 1980, O. 42, r. 12 – Courts of Judicature Act, 1964, ss. 16, 25, Schedule – Civil Law Act, 1956, s.11.

In this case an Equipment Lease Agreement had been executed between the appellant as lessor and the first respondent as lessee. The remaining respondents were the guarantors. Article 18(d) of the Lease Agreement provided that the lessee shall pay additional interest at the rate of 2% per month on whatever sums are in arrears calculated from the date such sums are due for payment until the date of actual payment by the lessee. The appellant brought an action to recover arrears due under the lease agreement and claimed to be entitled to interest at the rate of 2% per month not only on the amount due up to the date of